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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	
)	Case No. 3:07-cr-00056-JWS-JDR
Plaintiff,)	
)	
v.)	
)	<u>REQUEST FOR IMPLEMENTATION</u>
PETER KOTT,)	<u>OF ORDER (DKT. 407) CONCERNING</u>
)	<u>UNSEALING OF DOCUMENTS</u>
Defendants.)	
_____)	

The defense in the above-captioned matter filed a pleading entitled “Motion to Dismiss, or in the Alternative, for Discovery,” (Dkt. 404, hereinafter, “Motion to Dismiss”) on September 24, 2009. This Motion to Dismiss contained a number of documents, contained in appendices, that Defendant, as a precaution, filed under seal. In its filing, Defendant alerted the prosecution that it should file a motion if it wished to keep any or all of these documents contained in this judicial record sealed. On September 29, this court entered an order (Dkt. 406) permitting Defendant to file the documents in question — specifically, Appendices B, C, F and G to the Motion to Dismiss — under seal, while at the same time ordering the prosecution to file a motion

on or before October 20, 2009 [“within 21 days from (09/29/09)] if it wished to argue that some or all of the documents should remain under seal.

The time for any permitted motion to maintain these documents under seal has now passed. Intervenor Anchorage Daily News requests that the court follow up on its earlier order by directing the Clerk of Court to immediately unseal the documents in question, and to place these unsealed copies of Appendices B, C, F and G to Dkt. 404 in the public record of this case.

It is clear from the record that Defendant was not requesting that the documents in question be withheld from public scrutiny, and filed them under seal only out of abundance of caution, at the government’s request. Dkt. 404, at p. 15, n. 7. The Defendant reserved the right to oppose any attempt the prosecution might choose to make to keep the documents under seal. Likewise, had the prosecution chosen to argue that some or all of these documents should remain under seal, the Daily News would have filed an opposition, though the court is by now undoubtedly well aware of the substantial public interest in these documents, as well as the public’s presumptive constitutional and common law rights of access to them. Given the prosecution’s choice not to argue for continue sealing, no such filings from the defense or the press was necessary.

Finally, with respect to the last sentence of the court’s September 29, 2009, Order (#407), suggesting the possibility of filing motion papers under seal, the press intervenors, without waiving any objections to the filing of sealed pleadings and related documents, respectfully remind the parties of what is understood to be their duty to make a simultaneous filing, on the public record, noting the existence, and the title and/or nature of any such sealed filing.

Dated at Anchorage, Alaska, this 21st day of October, 2009.

LAW OFFICES OF D. JOHN MCKAY
Attorney for Press Intervenor
Anchorage Daily News

By: /s/ D. John McKay, ABA #7811117

CERTIFICATE OF SERVICE

I certify that I caused to be electronically filed the foregoing with the Clerk of the Court of the United States District Court for Alaska by using the CM/ECF system on October 21, 2009.

I certify that all participants in the case are, to the best of my knowledge, registered CM/ECF users and that service will be accomplished by the district court CM/ECF system.

DATED this 21st day of October, 2009.

s/ D. John McKay, ABA #7811117